IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.1262 SB OF 2007

DATE OF DECISION: AUGUST 29, 2007

Tilak Raj

.....Appellant

VERSUS

State of Punjab and others

....Respondents

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Ishwar Lal, Advocate,
for the appellant.

Mr. Shailesh Gupta, DAG, Punjab,
for the State.

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RANJIT SINGH, J. (ORAL)

Kashmir Singh @ Bittu son of Kundan Singh and four others were tried for an offence under Sections 15 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act"). Said Kashmir Singh @ Bittu, Kashmir Kaur @ Sheero and Jeet Kaur @ Jeeo were convicted and sentenced to suffer RI for 10 years coupled with fine of Rs.one lac each. At the time of sentencing the accused persons, the Special Judge, Amritsar, directed that car bearing NO.DNB-6254 shall be confiscated to the State.

Initially, Tilak Raj (appellant) filed a revision petition, impugning this part of the order, he being owner of the vehicle so ordered to be confiscated. He was not

accused of any offence under the Act. This revision filed by Tilak Raj was ordered to be converted into an appeal vide order dated 9.5.2007. The appeal is accordingly heard today.

Learned counsel for the appellant has raised a solitary ground to challenge this part of the order confiscating the car as passed by Special Judge, Amritsar. Contention is that issuance of a notice was essential requirement under law before any order confiscating the property like vehicle could be made. This is so provided under Section 63 of the Act, which stipulates that no order of confiscation of article or a thing shall shall be made without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of such claim. Learned counsel has also placed reliance on the case of ***Shaik Gouse Mohiddin Vs. State of Chhattisgarh,*** 2002 Cri.L.J. 4417, where it held that confiscation of a vehicle involved in an offence can not be ordered and handed over to the State without giving notice and an opportunity of being heard to the owner and where the same is done, it would be illegal. Counsel has also sought support from the case of ***State Bank of India Vs. Rajendra Kumar Singh and others,*** AIR 1969 Supreme Court 401 and ***N.Madhavan Vs. State of Kerala,*** AIR 1979 Supreme Court 1829.

The facts are not much in dispute. It is clear from the record that no notice was served to the appellant before passing the impugned order, confiscating the car in question to the State. In view of the law laid down in the judgments noticed above and Section 63 of the Act this part of the order can not be sustained.

The present appeal is accordingly allowed. The part of the order dated 27.4.2000 passed by Special Judge, Amritsar, in Sessions Case NO.(RBT) 269/1998, directing confiscation of the Car No.DNB-6254 to the Government is set-aside and the case is remanded back to the Special Judge, Amritsar, for deciding the said aspect afresh after following proper procedure. The Court would grant an opportunity of hearing to the appellant to show as to why the vehicle used in the offence be not confiscated to the State and pass an appropriate order afresh in accordance with law. Needless to mention that the appellant would be entitled to lead any evidence, if he so desires.

August 29, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**